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ACTION EAP-00

INFO	LOG-00	AID-00	CEA-01	CIAE-00	CTME-00	INL-00	DODE-00
	ITCE-00	DOFE-00	EB-00	EXME-00	E-00	FAAE-00	FBIE-00
	UTED-00	VC-00	FRB-00	TEDE-00	INR-00	IO-00	VCE-00
	MOFM-00	MOF-00	AC-00	NSAE-00	NSCE-00	OES-00	OIC-00
	OMB-00	NIMA-00	OPIC-01	GIWI-00	ACE-00	SP-00	SSO-00
	SS-00	STR-00	FMP-00	BGG-00	IIP-00	DRL-00	G-00
	NFAT-00	SAS-00	/002W				

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FM AMEMBASSY HANOI

TO SECSTATE WASHDC IMMEDIATE 6101

INFO USDA WASHDC

DEPT OF TREASURY WASHDC

USDOC WASHDC

AMCONSUL HO CHI MINH CITY

USMISSION GENEVA

UNCLAS HANOI 000017

SIPDIS

SENSITIVE

STATE PLEASE PASS TO USTR EBRYAN, GHICKS

STATE ALSO FOR E, EB AND EAP/BCLTV

STATE PASS USAID FOR CHAPLIN/ANE

USDOC FOR 6500 AND 4431/MAC/AP/OPB/VLC/HPPHO

USDA FOR FAS

GENEVA FOR USTR

E.O. 12958: N/A

TAGS: [ETRD](#) [ECON](#) [VM](#)

SUBJECT: Vietnam: USAID STAR Technical Assistance for Key Economic Legislation

1. (SBU) The National Assembly (NA) recently finalized its legislative agenda for 2005. The agenda encompasses laws and ordinances that will be reviewed and/or passed in 2005, but not decrees and other lower level implementing regulations that are also in progress. At the request of the GVN and the NA, the USAID-funded Support for Trade Acceleration (STAR) Project will work intensively with a variety of GVN ministries, National Assembly Committees and Communist Party of Vietnam Commissions on the drafting of the legislation necessary for implementation of the U.S.-Vietnam Bilateral Trade Agreement (BTA) and Vietnam's accession to the WTO. This cable details ongoing and upcoming STAR technical support for aspects of the GVN's legislative agenda related to its efforts toward greater international economic integration.

Roadmaps/Legislative Agenda

2. (SBU) STAR is supporting development of a Ministry of Justice (MOJ) Roadmap on BTA Implementation that will outline the status of implementation through the end of 2004. STAR is also supporting MOJ efforts to develop a Roadmap for WTO Accession that clearly identifies both the number of laws and regulations that need to be reformed to meet WTO accession requirements and the key elements within the laws that need to be revised. The MOJ hopes to complete the WTO roadmap by January 2005. STAR will support workshops to help the GVN focus on the substance of the necessary legal revisions and identify how to complete the reforms in time to meet the GVN's goal of accession to the WTO in 2005.

Legislation Scheduled for Approval in May 2005

3. (SBU) The following are the Laws and Ordinances scheduled for approval in May 2005 for which STAR is providing technical assistance.

-- A full revision of the Civil Code. This is the core law regulating all civil activity in Vietnam. For the last two years, STAR has provided the MOJ-led drafting team with significant technical support on draft revisions to this law. This assistance included technical workshops and three line-by-line written analyses of several drafts of the revised law (Note: The law has more than 500 articles. End Note.) STAR has begun working with the Law Committee of the National Assembly and the Internal Affairs Commission (IAC) of the Communist Party of Vietnam (CPV), which have the lead on finalizing the Civil Code. In mid- to late-January the National Assembly will post a draft of the revised Civil Code for public comment for two months. STAR will help the Law Committee collect and examine these public comments and

will host intensive week-long, article-by-article discussions with the Law Committee and IAC leaders and staff as they finalize the law after public review, in March or April. The revisions to the Civil Code are intended to set the foundation for a modern, consistent and simplified legal framework for contract enforcement, secured transactions, and fundamental property rights.

-- A full revision of the Commercial Law. The revised Commercial Law is intended to provide a modern and simplified legal framework for commercial transactions. STAR has been working intensively with the Ministry of Trade-led drafting team for two years on this law. STAR recently began to work with the National Assembly's Committee on Economics and Budgetary Affairs (CEBA), and the IAC to ensure that the contract elements in the Commercial Law are fully consistent with the revised Civil Code contract elements. Core contract law will be contained in the Civil Code, while special rules for commercial transactions will be in the Commercial Law. The National Assembly plans to pass both the Civil Code and the Commercial law in the same session. A draft of the Commercial Law has been released for public comment. (Note: The Commercial Law will establish a broad legal framework for liberalizing distribution services in Vietnam, but key reforms will need to be done through issuance of follow-on government regulations. End Note.)

-- Development of a new Law on International Treaties. STAR is working with the Ministry of Foreign Affairs-led drafting team and the National Assembly's Committee on Foreign Affairs on this new law, which is supposed to clearly and comprehensively lay out the legal status of international treaties relative to domestic law, identify the relative responsibilities for approving treaties by the state (e.g. the relative roles of the NA, President and Government) and establish transparency and reporting requirements. Passage of this law is critical to implement trade agreements such as the BTA and the WTO. STAR has advised the GVN drafters to 1) include strong wording that requires domestic law to be adjusted as quickly as possible to meet international treaty requirements and 2) allow certain treaties to be self-enforcing. STAR has also suggested the idea of an omnibus bill type approach within this law whereby the National Assembly could adjust specific treaty-related elements of many laws at once. The current system requires the National Assembly to make the revisions law by law. STAR's omnibus proposal is not incorporated into the current draft, but has been discussed seriously by the Ministry of Foreign Affairs and the National Assembly's Committee on Foreign Affairs.

-- Amendments to the Customs Law of 2000. Changes to the Customs Law are being driven by the need to conform fully with WTO requirements and to facilitate a planned USD 70 million World Bank Customs Modernization Project loan. The General Department of Customs (GDC) plans to use the World Bank loan to go beyond WTO requirements to incorporate much of what is in the Kyoto Customs Agreement. The GDC believes this is necessary to develop a fully modern and effective customs system, including a major shift toward e-customs. Changes to the Customs Law are expected to facilitate risk management for the transactions value processes and the modernization of all customs procedures. STAR assisted the GDC in 2003 with the key legal reforms necessary for Vietnam to meet its BTA obligation to adhere to WTO Customs Valuation Agreement procedures. In 2004, STAR helped the GDC begin developing the legal framework for border measures to protect IPR for copyright and industrial property. In 2005, STAR will review and comment on draft amendments to the Customs Law but anticipates that the World Bank will take the lead on technical assistance in general. (Note: A new circular on border measures for industrial property is expected to be finalized in January 2005. STAR has provided comments on drafts of this circular. End Note.)

Legislation to be Reviewed Spring 2005/Approved Fall 2005

14. (SBU) The following are Laws and Ordinances scheduled for review in the spring of 2005 and approval in the Fall 2005 for which STAR is providing technical assistance.

-- A new Law on Negotiable Instruments. This law will contribute to the development of a modern, comprehensive and consistent legal framework for commercial transactions in Vietnam (developed in parallel with the revisions to the Civil Code and Commercial Law, along with elimination of an outdated Ordinance on Economic Contracts). The law includes many highly technical issues including issuance of bills of exchange and promissory notes. The NA Committee on Economics and Budgetary Affairs (CEBA) has asked STAR to help increase NA deputies and staff understanding of the law. STAR will host technical workshops and produce a first-of-its-kind background paper on the technical issues underlying the law. While STAR will be the lead technical

advisor for CEBA, the IMF may also provide some initial coordinated support.

-- A new Intellectual Property Rights Law. The GVN decided in August to fast track the drafting of a stand-alone IPR Law in 2005 to form the basis for a comprehensive, modern, and consistent legal framework for protecting IPR. Currently, Part VI of the Civil Code serves as the basis for IPR law in Vietnam. The new law would seek to modernize the legal framework for IPR to comply with BTA IPR obligations and the WTO Agreement on Trade Related Intellectual Property. It also should facilitate Vietnam's efforts to accede to various international IPR conventions and enhance

Vietnam's enforcement capabilities, both in terms of administrative procedures and the role of the courts. STAR is working with the Ministry of Science and Technology drafting team (including the National Office of Intellectual Property (NOIP), the Ministry of Culture and Information (for copyright issues) and the Science and Technology Committee in the National Assembly). (Note: STAR is also supporting GVN efforts to finalize a new Decree on Remedies that should increase the administrative penalties for IPR infringement and a new set of regulations on optical disks. In 2004, STAR worked intensively with the courts to develop a new Civil Procedure Code (CPC) that went into effect January 1 and is now working with the Supreme People's Court (SPC) to train 400 to 500 judges from the largest provinces in Vietnam to understand the new CPC rules. STAR is also working with the SPC to develop implementing guidelines for the CPC and to train a core set of about 20 judges to develop specialized IPR skills. End Note.)

-- A new Law on E-Transactions. This law will form the legal basis for how digital information is used in commercial transactions and in government operations as well as address how the courts will handle the validity of disputes related to digital transactions and evidence. The law will deal with both E-commerce and E-government, as well as with IPR issues related to digital property. The Science and Technology Committee of the NA will take the lead in drafting this new law, and the Law Committee will review it for final approval. The Science and Technology Committee (with support from MOST) has asked STAR to take the lead in supporting development of this law. An initial draft is likely to be ready in January.

-- Amendments to the Law on Import and Export Duties. The Tax Policy Department of the MOF has asked STAR to look at a draft set of amendments to this important law, which deals with the process of collecting tariff and other trade tax revenue. Changes will need to be coordinated closely with the changes in customs procedures for classifying and inspecting traded goods.

Legislation to be Reviewed November 2005/Approved May 2006

5. (SBU) The following are laws and ordinances scheduled for review in November 2005 and approval in May 2006 for which STAR is providing technical assistance.

-- Revision of the Enterprise Law. This Law is intended to unify the regulations for registration and corporate governance of private, state-owned and foreign-owned companies in Vietnam and to further streamline and modernize these procedures. The Central Institute for Economic Management (CIEM) under the Ministry of Planning and Investment (MPI) is taking the lead in drafting the Uniform Enterprise Law, and has just finished an informal first draft. STAR has been asked to comment on the draft. A number of other donors, including the UNDP and the USAID-funded Vietnam Competitiveness Initiative (VNCI), are also providing the GVN with technical assistance in this area. However, STAR will be the only donor focusing on the international requirements (BTA/WTO) for this law.

-- A new Common Investment Law. This law will establish the legal framework for both domestic and foreign investment, including foreign, private and state-owned investment in a single legal document. Passage of this law should be a key advance in terms of providing national treatment for investments and creating a more level playing field for all types of investment. New rules on investment licensing will be key for implementing BTA and WTO market access improvements in both the goods and services sectors. STAR and other donors have recommended that the GVN move to a limited negative list of restricted investment sectors. The new law could also eliminate performance requirements for investment, institute registration (rather than licensing) procedures for many types of foreign investment, develop international investment dispute commitments, harmonize investment incentives, and enhance protections for international investment. STAR supported an MPI research report A Report on the 17 Years of Implementation of the

Foreign Investment Law," as well as surveys of business views from the south, central and northern areas. STAR is working closely with the legal Department of MPI to develop the draft investment law and will later work with the NA Committee on Economics and Budgetary Affairs to help finalize the law. A draft law should be available for comment in January.

-- A new Law on Judgment enforcement. This law will work to address a weakness in the court system's ability to enforce judgments. This is key for effective implementation of BTA requirements on arbitration, intellectual property rights and other commercial dispute settlement. STAR is working closely with the Ministry of Justice to develop the basic reports and first draft of this Law, and will have a concentrated two-week program on it in January 2005. STAR will also support technical workshops with the Law Committee of the National Assembly and the Central Internal Affairs Committee of the Party and will continue to support development of the law over the course of 2005.

Legislation for Development late in 2005 and 2006

16. (SBU) The following are laws and ordinances that will be addressed in 2005 and 2006 for which STAR has been asked to provide technical assistance.

-- A new Securities Law. This law will upgrade and consolidate the current legal framework for developing and energizing capital markets in Vietnam, including both equity and bond markets. It should also address several key BTA requirements involving the access U.S. investors have to Vietnamese capital markets. STAR has been working closely with the State Securities Commission (SSC) on the first stages of development of this new law, and will continue to do so over the course of 2005. The SSC hopes to finalize the law in the November 2006 session of the National Assembly. (Note: STAR is also supporting implementing regulations on unlisted securities trading and over-the-counter trading. End Note.)

-- Amendments to the Ordinance on Procedures for Resolving Administrative Cases. The Supreme People's Court has asked for STAR's assistance with amendments to this ordinance, but drafting is closely linked to planned revisions to the Law on Complaints and Denunciations (see separate para below). Changes to this ordinance should address several important BTA issues including broadening the jurisdiction of the administrative courts to more effectively deal with IPR issues and to strengthen overall judicial review of administrative decisions.

-- A new Law on Technology Transfer. This law is intended to modernize an outdated legal and policy framework for technology transfer in Vietnam. Foreign businesses have major complaints about the inadequacy of the current legal framework. The Ministry of Science and Technology (MOST) is focused on developing the new Law on Intellectual Property Rights in 2005, but will begin work on a new draft Law on Technology Transfer for passage by the end of 2006. MOST has asked for STAR support on this Law. (Note: Currently a 1998 Government Decree governs technology transfers issues and includes a cap on royalty payments to owners of foreign franchises in Vietnam. Most foreign experts deem the current five percent cap too low to allow foreign franchises to operate. MOST has circulated numerous draft revisions to this Decree, none of which have adequately addressed concerns of the business community. The issue of technology transfer was raised at the Vietnam Business Forum meeting in December. End Note.)

-- A new Law on Lawyers. This law will consolidate and simplify the overall legal services system in Vietnam. The Ministry of Justice has asked for STAR support but does not anticipate starting until 2006. STAR previously provided technical assistance for the Decree on Foreign Lawyers.

New Laws Proposed in this session

17. (SBU) During the last NA session, two new reforms related to economic governance were added to the legislative agenda.

-- Anti-Corruption Law was added on a fast track to be commented on in May 2005 and approved in the November 2005 session. The State Inspectorate (SI) will be in the lead on this law. STAR is in close communication with the SI in this regard. There are a number of other donors also involved with this legislation. STAR currently will only review key drafts.

-- STAR has recommended the GVN undertake a full revision to the Law on Complaints and Denunciations (LCD). This law currently does not provide an adequate framework for

resolving complaints or disputes against government decisions. The law needs to be revised to respond to requirements in the BTA for the right to appeal government decisions. Reforms could include establishing a set of independent tribunals in the executive branch for resolving disputes with right to appeal to the courts for final resolution. STAR will work with the State Inspectorate, the Law Committee of the National Assembly and the Central Internal Affairs Commission of the Party to advance understanding and support for a major revision in 2005. STAR has supported a research report issued by the Central Internal Affairs Commission of the Party on "Improving Commercial and Administrative Dispute Settlement in Vietnam" that will be released in January.

Support for Implementing Regulations

18. (SBU) In addition, the GVN has asked STAR to support the development of implementing regulations for all of the new and revised legislation listed above.

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